IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.350 OF 2007

Shri Pandit Jairam Kapase
since deceased through LHRs
1A. Smt.Parvatibai Jairam Kapase
& Ors. ..Appellants.
Vs.
The Chief Administrative Officer CIDCO
& Anr. ..Respondents.

Mr.H.E.Palwe, adv. for the Appellants.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 21, 2007.

P.C.:

1. Heard the learned counsel for the appellant, who is original defendant no.2.

2. To state in brief, the defendant no.1 CIDCO issued a notification on 16-2-1980 for acquisition of certain properties belonging to one Gopal Jaju in 1981. CIDCO took possession of 662 sq.mtrs. of the land from the said Gopal Jaju and award for the same came to be passed on 5-9-1986. Out of that property, certain plots were laid out and the defendant no.1 CIDCO allotted plot no.43 admeasuring 384.56 sq.mtrs. to the defendant no.2/appellant in the year 1984 and put him in possession of the same in the year 1990. The plaintiff Ajit Singh, who is respondent no.2 in the present appeal, filed regular civil suit no.453 of 1991

for declaration of his title and perpetual injunction in respect of piece of land admeasuring 662 sq.mtrs., which he claims to have purchased under the registered sale deed from the said Jaju in the year 1974. The defendants contested the suit. The defendant no.2 contended that the plaintiff has no concern with the suit property. On the basis of pleadings, issues were framed by the trial Court and after hearing the evidence, the trial Court accepted the contention of the plaintiff and decreed the suit whereby the defendants are perpetually restrained from disturbing or obstructing possession of the plaintiff over the suit property described in paragraph one of the plaint. Against this both the defendants preferred appeals, which came to be dismissed. Second Appeal is filed only by the defendant no.2.

3. The learned counsel pointed out that even though the defendant no.2 was examined as witness, the learned appellate Court committed error in recording that the defendant no.2 had not entered into witness box. His contention appears to be right. The judgment of the trial Court reveals that in his evidence, the defendant no.2 has stated that he had no concern with the suit property. Mistake committed by the learned Appellate Court in recording that the defendant no.2 was not examined does not go to the root of the case. In his

written statement, the defendant no.2 had contended that the plaintiff had no concern with the suit property and thereby he had challenged the right of the plaintiff over the suit property. However, in his evidence, he admitted that he himself had no concern with the suit property indicating that the plot allotted to him by CIDCO was different from the suit property, which was purchased by the plaintiff from Jaju in the year 1974, long before the CIDCO had acquired certain properties from the said Jaju. As the suit property was purchased by the plaintiff in the year 1974 naturally CIDCO could not have acquired that property from Gopal Jaju in the year 1980 or 1986. Taking into consideration the concurrent findings of the Courts below, I find no substantial question of law involved in the matter.

4. In the result, appeal stands dismissed.

[J.H.BHATIA, J.]